BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOSE LOREDO)
Claimant VS.)))) Docket No. 186 846
EXCEL CORPORATION Respondent) Docket No. 186,846)
AND	{
SELF INSURED Insurance Carrier	

ORDER

Claimant appeals from the September 28, 1994 Preliminary Order. In that Order, the Administrative Law Judge denied preliminary benefits because he found claimant's injury did not arise out of and in the course of claimant's employment.

Issues

The issue to be considered on appeal is whether claimant's injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board has reviewed the record and considered the arguments. The Appeals Board finds:

- (1) The Appeals Board has jurisdiction to review the preliminary finding that claimant's injury did not arise out of and in the course of his employment. K.S.A. 44-534a.
- (2) The Appeals Board agrees with the finding of the Administrative Law Judge: claimant has not proven by a preponderance of the credible evidence his injury arose out of and in the course of his employment. The Appeals Board agrees for three reasons: (a) Claimant did not initially advise his employer the injury was work related; (b) Dr. Murati, the

IT IS SO ORDERED.

treating physician, concluded the injury he found on x-ray was not work related; and (c) the video tape of claimant's work duties supports Dr. Murati's opinion.

WHEREFORE, the Appeals Board finds the Preliminary Order of Administrative Law Judge Thomas F. Richardson, dated September 28, 1994, should be, and the same is hereby, affirmed.

Dated this day of N	lovember, 1994.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: C. Albert Herdoiza, Kansas City, KS David J. Rebein, Dodge City, KS Thomas F. Richardson, Administrative Law Judge George Gomez, Director